

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DANIEL RICHARDS,

No. C 10-3007 WHA (PR)

Petitioner,

**ORDER DENYING MOTION TO
DISMISS; TO SHOW CAUSE**

v.

A. NOLL, Warden,

(Docket No. 4)

Respondent.

Petitioner, a California prisoner currently incarcerated at the Correctional Training Facility in Soledad, California, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. 2254. Respondent was ordered to file an answer or a motion “on procedural grounds” showing cause why the petition should not be granted. Instead, respondent has filed a motion to dismiss because the petition does not state a cognizable claim for relief.

Respondent contends that petitioner’s claim that the denial of parole violated his right to “Due Process” is insufficient because it does not specify the *federal* right to due process was violated. Respondent cites no authority that a petitioner is required to specify that the asserted due process right is federal, particularly a pro se petitioner whose petition must be liberally construed. *See Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001). The only authority cited by respondent pertains to how to properly present a federal claim in *state* court for purposes of exhaustion, not how to properly present a habeas claim in federal court. *Cf. Baldwin v. Reese*, 541 U.S. 27, 32 (2004). Respondent notes, correctly, that the petition incorporates by reference

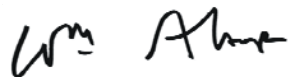
1 an attached state habeas petition in which petitioner relies heavily upon numerous federal cases
2 in arguing that his due process rights were violated by the denial of parole. Respondent states
3 that this is not the “same” as asserting a federal claim. Respondent cites no authority that
4 incorporating an attached brief by reference in which the federal right is clearly argued is
5 insufficient, particularly under the liberal construction standard, to present a cognizable claim
6 for federal habeas relief. It was already determined in the Order to Show Cause that petitioner
7 stated a cognizable claim for federal habeas relief, and respondent’s motion presents no reason
8 to find otherwise.

9 Respondent’s motion to dismiss (docket number 4) is **DENIED**.

10 Respondent shall file, within **thirty** days of the issuance of this order, an answer or
11 motion that complies with the Order to Show Cause. All other provisions of the Order to Show
12 Cause remain in effect.

13 **IT IS SO ORDERED.**

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15 Dated: December 7, 2010.



WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE

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